

**§ 1. Short title**

This chapter may be cited as the “Commodity Exchange Act.”

(Sept. 21, 1922, ch. 369, §1, 42 Stat. 998; June 15, 1936, ch. 545, §1, 49 Stat. 1491.)

**PRIOR PROVISIONS**

This chapter superseded act Aug. 24, 1921, ch. 86, 42 Stat. 187, known as “The Future Trading Act,” which act was declared unconstitutional, at least in part, in *Hill v. Wallace*, Ill. 1922, 42 S.Ct. 453, 259 U.S. 44, 66 L.Ed. 822. Section 3 of that act was found unconstitutional as imposing a penalty in *Trusler v. Crooks*, Mo. 1926, 46 S.Ct. 165, 269 U.S. 475, 70 L.Ed. 365.

**AMENDMENTS**

1936—Act June 15, 1936, substituted “Commodity Exchange Act” for “The Grain Futures Act”.

**EFFECTIVE DATE OF 1936 AMENDMENT**

Section 13 of act June 15, 1936, provided that: “All provisions of this Act [see Tables for classification] authorizing the registration of futures commission merchants and floor brokers, the fixing of fees and charges therefor, the promulgation of rules, regulations and orders, and the holding of hearings precedent to the promulgation of rules, regulations, and orders shall be effective immediately. All other provisions of this Act shall take effect ninety days after the enactment of this Act [June 15, 1936].”

**SHORT TITLE OF 1995 AMENDMENT**

Pub. L. 104-9, §1, Apr. 21, 1995, 109 Stat. 154, provided that: “This Act [amending section 16 of this title] may be cited as the ‘CFTC Reauthorization Act of 1995’.”

**SHORT TITLE OF 1992 AMENDMENT**

Pub. L. 102-546, §1(a), Oct. 28, 1992, 106 Stat. 3590, provided that: “This Act [enacting sections 1a and 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title] may be cited as the ‘Futures Trading Practices Act of 1992’.”

**SHORT TITLE OF 1986 AMENDMENT**

Pub. L. 99-641, §1, Nov. 10, 1986, 100 Stat. 3556, provided that: “This Act [enacting section 2271a of this title, amending sections 2a, 6b, 6c, 7a, 13, 13a-1, 15, 16, 21, 23, 74, 87b, 1444, 1445b-3, and 1445c-2 of this title, sections 590h and 3831 of Title 16, Conservation, sections 606, 609, 621, 671, and 676 of Title 21, Food and Drugs, repealing section 14 of this title, and enacting provisions set out as notes under sections 20, 71, 76, 87b, and 2271a of this title and sections 601, 606, 609, 621, 671, and 676 of Title 21] may be cited as the ‘Futures Trading Act of 1986’.”

**SHORT TITLE OF 1983 AMENDMENT**

Pub. L. 97-444, §1, Jan. 11, 1983, 96 Stat. 2294, provided: “That this Act [enacting sections 2a, 12d, 25, and 26 of this title, amending sections 2, 4, 4a, 5, 6, 6a, 6c, 6d, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7a, 8, 9, 12, 12a, 13, 13a-1, 13a-2, 13c, 16, 16a, 18, 20, 21, 23, and 612c-3 of this title, and enacting provisions set out as a note under section 2 of this title] may be cited as the ‘Futures Trading Act of 1982’.”

**SHORT TITLE OF 1978 AMENDMENT**

Pub. L. 95-405, §1, Sept. 30, 1978, 92 Stat. 865, provided: “That this Act [enacting sections 13a-2, 16a, and 23 of this title, amending sections 2, 4a, 6c, 6d, 6f, 6g, 6k, 6m, 6n, 6o, 7a, 8, 12, 12a, 12c, 13, 13a, 15, 16, 18, and 21 of this

title and section 6001 of Title 18, Crimes and Criminal Procedure, repealing section 15a of this title, omitting sections 12-1 to 12-3 of this title, and enacting provisions set out as notes under sections 2 and 20 of this title] may be cited as the ‘Futures Trading Act of 1978’.”

**SHORT TITLE OF 1974 AMENDMENT**

Pub. L. 93-463, §1, Oct. 23, 1974, 88 Stat. 1389, provided: “That this Act [enacting sections 4a, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 9a, 12-2, 13-3, 12c, 13a-1, 15a, 18, 19, 20, 21, and 22 of this title, amending sections 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 11, 12, 12-1, 12a, 12b, 13, 13a, 13b, 13c, 15, and 16 of this title and sections 5314, 5315, 5316, and 5108 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 2, 4a, and 6a of this title] may be cited as the ‘Commodity Futures Trading Commission Act of 1974’.”

**CROSS REFERENCES**

Power of Congress to regulate interstate commerce, see Const. Art. I, §8, cl. 3.

**§ 1a. Definitions**

As used in this chapter:

**(1) Board of trade**

The term “board of trade” means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.

**(2) Commission**

The term “Commission” means the Commodity Futures Trading Commission established under section 4a(a) of this title.

**(3) Commodity**

The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, *Solanum tuberosum* (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in section 13-1 of this title, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.

**(4) Commodity pool operator**

The term “commodity pool operator” means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

**(5) Commodity trading advisor****(A) In general**

Except as otherwise provided in this paragraph, the term “commodity trading advisor” means any person who—

(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market;

(II) any commodity option authorized under section 6c of this title; or

(III) any leverage transaction authorized under section 23 of this title; or

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).

#### **(B) Exclusions**

Subject to subparagraph (C), the term “commodity trading advisor” does not include—

(i) any bank or trust company or any person acting as an employee thereof;

(ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher;

(iii) any floor broker or futures commission merchant;

(iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;

(v) the fiduciary of any defined benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

(vi) any contract market; and

(vii) such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.

#### **(C) Incidental services**

Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

#### **(D) Advisors**

The Commission, by rule or regulation, may include within the term “commodity trading advisor”, any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.

#### **(6) Contract of sale**

The term “contract of sale” includes sales, agreements of sale, and agreements to sell.

#### **(7) Cooperative association of producers**

The term “cooperative association of producers” means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricul-

tural products and otherwise complying with sections 291 and 292 of this title, including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or non-member business in determining the compliance of any such association with this chapter.

#### **(8) Floor broker**

The term “floor broker” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market.

#### **(9) Floor trader**

The term “floor trader” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account, any commodity for future delivery on or subject to the rules of any contract market.

#### **(10) Foreign futures authority**

The term “foreign futures authority” means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

#### **(11) Future delivery**

The term “future delivery” does not include any sale of any cash commodity for deferred shipment or delivery.

#### **(12) Futures commission merchant**

The term “futures commission merchant” means an individual, association, partnership, corporation, or trust that—

(A) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market; and

(B) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

#### **(13) Interstate commerce**

The term “interstate commerce” means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same state,<sup>1</sup> territory, or possession, or the District of Columbia, but through any place outside

<sup>1</sup> So in original. Probably should be capitalized.

thereof, or within any territory or possession, or the District of Columbia.

#### (14) Introducing broker

The term “introducing broker” means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

#### (15) Member of a contract market

The term “member of a contract market” means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a contract market or given members’ trading privileges thereon.

#### (16) Person

The term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(Sept. 21, 1922, ch. 369, § 1a, as added Oct. 28, 1992, Pub. L. 102-546, title IV, § 404(a), 106 Stat. 3625.)

#### REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in par. (5)(B)(v), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

#### EFFECTIVE DATE

Section 403 of Pub. L. 102-546 provided that: “Except as otherwise specifically provided in this Act [enacting this section and section 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title], this Act and the amendments made by this Act shall become effective on the date of enactment of this Act [Oct. 28, 1992].”

### § 2. Accounts, agreements, and transactions subject to jurisdiction of Commodity Futures Trading Commission; relation to jurisdiction of Securities and Exchange Commission and Federal and State courts; excepted transactions

(i) The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in section 2a of this title, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated pursuant to section 7 of this title or any other board of

trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State. (ii) Nothing in this chapter shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.

(Sept. 21, 1922, ch. 369, § 2(a)(1)(A)(i), (ii), formerly § 2(a), 42 Stat. 998; June 15, 1936, ch. 545, §§ 2, 3, 49 Stat. 1491; Apr. 7, 1938, ch. 108, 52 Stat. 205; Oct. 9, 1940, ch. 786, § 1, 54 Stat. 1059; Aug. 28, 1954, ch. 1041, title VII, § 710(a), 68 Stat. 913; July 26, 1955, ch. 382, § 1, 69 Stat. 375; Feb. 19, 1968, Pub. L. 90-258, § 1, 82 Stat. 26; July 23, 1968, Pub. L. 90-418, 82 Stat. 413; renumbered § 2(a)(1) and amended Oct. 23, 1974, Pub. L. 93-463, title I, § 101(a)(1), (2), title II, §§ 201, 202, 88 Stat. 1389, 1395; Sept. 30, 1978, Pub. L. 95-405, § 2(1), 92 Stat. 865; renumbered § 2(a)(1)(A) and amended Jan. 11, 1983, Pub. L. 97-444, title I, § 101(a)(1), (2), title II, § 201, 96 Stat. 2294, 2297; renumbered § 2(a)(1)(A)(i), (ii) and amended Oct. 28, 1992, Pub. L. 102-546, title IV, § 404(b)(1)-(5), (7), 106 Stat. 3628.)

#### CODIFICATION

Section is comprised of subsec. (a)(1)(A)(i) and (ii) of section 2 of the Commodity Exchange Act, act Sept. 21, 1922. Subsec. (a)(1)(A)(iii) is classified to section 4 of this title. Subsec. (a)(1)(B) is classified to section 2a of this title. Subsecs. (a)(2) to (11) of section 2 of the Commodity Exchange Act are classified to section 4a of this title. Subsec. (b) of section 2 of the Commodity Exchange Act is classified to section 3 of this title.

#### AMENDMENTS

1992—Pub. L. 102-546, § 404(b)(2)-(5), (7), designated provisions of former third sentence as cl. (i), redesignated cls. (i) and (ii) of former third sentence as subcls. (I) and (II), respectively, designated former fifth sentence as cl. (ii), and struck out former first, second, sixth, seventh, and ninth through last sentences, which included definitions of “contract of sale”, “person”, “commodity”, “future delivery”, “board of trade”, “interstate commerce”, “cooperative association of producers”, “member of a contract market”, “futures commission merchant”, “introducing broker”, “floor broker”, “the Commission”, “commodity trading advisor”, and “commodity pool operator”. See section 1a of this title.

Pub. L. 102-546, § 404(b)(1), which directed the substitution of “(i) The Commission” for former first two sentences and provisions of former third sentence ending with “; *Provided*, That the Commission”, was executed by making the substitution for provisions ending with “: *Provided*, That the Commission”, to reflect the probable intent of Congress.

1983—Pub. L. 97-444, § 101(a)(2), inserted in third sentence, first proviso, “, except to the extent otherwise